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December 21, 2012

**BY HAND**

Mr. Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6679 (Congressional Leadership Fund)

Dear Mr. Herman:

This office represents the Congressional Leadership Fund ("CLF") and Caleb Crosby in his official capacity as Treasurer in the above-captioned Matter Under Review ("MUR").<sup>1</sup> This letter responds to the Complaint by Chris Redfern, Chairman of the Ohio Democratic Party received by the Federal Election Commission ("FEC" or "Commission") on October 31, 2012.<sup>2</sup> The Complaint alleges that CLF's increase in its television advertising after a publicly reported reduction in advertising by the Jim Renacci for Congress committee was coordinated by CLF and the Renacci campaign. This allegation is unsubstantiated and untrue.

CLF denies that it coordinated advertising with the Renacci campaign in violation of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"). The Complaint's speculation to the contrary is devoid of facts that can serve as the basis for a viable coordination allegation. The Complaint's allegation is further belied by this response and the enclosed Affidavit of Brian O. Walsh, President of CLF, (hereinafter "Walsh Aff.") and Affidavit of Robin D. Roberts, President of American Media & Advocacy Group, (hereinafter "Roberts Aff."). Accordingly,

<sup>1</sup> This MUR was initiated against CLF and Charles Meachum in his official capacity as Treasurer. On December 4, 2012, this office notified the Federal Election Commission that CLF filed an amended Form 1 Statement of Organization on December 3 indicating that Caleb Crosby succeeded Charles Meachum as Treasurer of CLF. Pursuant to the Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 6 (Jan. 3, 2005) ("successor treasurers will be substituted for the predecessor treasurer"), this office filed a superseding Statement of Designation of Counsel on behalf of the CLF and Caleb Crosby in his official capacity as Treasurer.

<sup>2</sup> By letter dated December 6, 2012, the Commission granted our request for an extension of time to respond to the Complaint until December 28.

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the Commission should find no reason to believe that CLF and its Treasurer violated the Act and dismiss this matter.

### FACTS

CLF is an independent expenditure-only committee that registered with the FEC on October 24, 2011. CLF has engaged in numerous independent expenditures in connection with federal elections including the 2012 general election between Representative Betty Sutton and Representative Jim Renacci for the 16<sup>th</sup> congressional district of Ohio.

On September 14 and September 21, 2012, CLF began disseminating almost \$1.1 million in advertising expressly advocating the defeat of Rep. Sutton. *See* 24/48 Hour Notice of Independent Expenditures (Sept. 16, 2012) *available at* <http://query.nictusa.com/cgi-bin/dcdev/forms/C00504530/809679/>; 24/48 Hour Notice of Independent Expenditures (Sept. 23, 2012) *available at* <http://query.nictusa.com/cgi-bin/dcdev/forms/C00504530/811601/>.<sup>3</sup>

On October 19 and 26, CLF began disseminating over \$1.3 million in additional advertising expressly advocating the defeat of Rep. Sutton. *See* 24/48 Hour Notice of Independent Expenditures (Oct. 20, 2012) *available at* <http://query.nictusa.com/cgi-bin/dcdev/forms/C00504530/822444/>; 24/48 Hour Notice of Independent Expenditures (Oct. 27, 2012) *available at* <http://query.nictusa.com/cgi-bin/dcdev/forms/C00504530/829387/>.

Finally, on October 30 and November 1, CLF began disseminating approximately \$350,000 in additional advertising expressly advocating the defeat of Rep. Sutton. *See* 24/48 Hour Notice of Independent Expenditures (Oct. 31, 2012) *available at* <http://query.nictusa.com/cgi-bin/dcdev/forms/C00504530/830711/>; 24/48 Hour Notice of Independent Expenditures (Nov. 2, 2012) *available at* <http://query.nictusa.com/cgi-bin/dcdev/forms/C00504530/831858/>.

<sup>3</sup> These independent expenditures are not the subject of the Complaint and are not discussed further in this response. Nonetheless, CLF denies coordinating any of its independent expenditures with the Renacci campaign. Walsh Aff. ¶ 9.



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CLF retained American Media & Advocacy Group ("AMAG") to provide media planning and placement services for CLF's television advertising opposing Rep. Sutton. Walsh Aff. ¶ 3. Those services included both "Media Market Analysis" whereby AMAG developed "comprehensive media plans and recommendations" as well as "[r]ate negotiation" and "schedule preparation and placement" of television advertising. *Id.* In connection with these services, AMAG provided CLF with "[u]se of Scarborough media research in all applicable markets" and "unlimited use" of AMAG's "proprietary competitive data base system" used for the "[c]ollection and distribution of competitive ads and information in applicable markets." *Id.*

This data base system is a proprietary AMAG commercial product that provides data regarding spending on television advertising by other political advertisers in various media markets. *Id.* AMAG's affiliate, National Media Research, Planning and Placement, provides the following additional information about the product:

Recognizing the demand for fast and accurate competitive spending, we developed a proprietary competitive media tracking and management database. This system allows our clients to gain a full perspective of a race's advertising by all candidates, party organizations, and independent groups. This campaign intelligence is more critical than ever due to the increase in independent expenditure and third party issue group spending.

We monitor competitive spending in real-time. Our competitive tracking team is in daily contact with television and radio outlets to monitor orders placed by political advertisers. We keep you informed about where and how much your opponent is spending as well as market and station level spending with projected GRP totals.

National Media Research, Planning and Placement,  
<http://www.natmedia.com/media-services> (last visited December 5, 2012); Roberts

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Aff. ¶ 4.<sup>4</sup> Other commercial vendors provide similar media tracking data and services. See, e.g., Kantar Media, <http://www.kantarmedia.com/cmag> (last visited Dec. 5, 2012). In addition, information regarding the sponsor, timing, and amount of campaign-related television advertising is a matter of public record that television stations are required to make immediately available. See 47 U.S.C. § 315(e); 47 C.F.R. § 73.1943.

Media tracking is a common practice engaged in by numerous political advertisers. The Obama campaign relied heavily on media tracking data to make what has been reported as the campaign's most critical strategic decision to air significant television advertising during the summer of 2012: "Obama's team, which kept a precise accounting of ad bookings, could clearly see that Romney and his GOP-related groups weren't planning a big push in the early summer." Mike Allen, Politico Playbook (Dec. 17, 2012, 9:08 AM) <http://www.politico.com/playbook> (quoting passage from *The End of the Line: Romney vs. Obama – The 34 days that decided the election*, by Glenn Thrush and Jonathan Martin, published by Random House).

When CLF retained AMAG, AMAG confirmed to CLF that AMAG had procedures to ensure that its services on behalf of CLF would not result in impermissible coordination with any federal candidate or political party. Walsh Aff. ¶ 4; Roberts Aff. ¶ 7. According to AMAG's President, those procedures include, but are not limited to, placing personnel on separate teams, establishing separate work areas, using separate accounts in media buying software programs, and using separate business entities. Roberts Aff. ¶ 5. AMAG implemented and adhered to those procedures while providing its services to CLF. Roberts Aff. ¶ 6-7.

On or about October 9, 2012, AMAG reserved television advertising time from October 19 through November 6 for CLF independent expenditures opposing Rep. Sutton. Walsh Aff. ¶ 6. The amount and dates reserved were based on CLF's internal budget and strategic considerations that were informed by the ad data provided by AMAG pursuant to its service agreement with CLF. *Id.*

<sup>4</sup> AMAG was established by National Media Research, Planning and Placement as part of the companies' efforts to avoid impermissible coordination. Roberts Aff. ¶ 5.

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CLF continued to monitor television advertising spending for and against Rep. Sutton and Rep. Renacci by relying on AMAG's ad data. *Id.* ¶ 7. Based on this information, CLF determined that organizations supporting Rep. Sutton or opposing Rep. Renacci had purchased significant television advertising time. *Id.* CLF began discussing with AMAG the possibility of increasing CLF's television advertising that opposed Rep. Sutton. *Id.* ¶ 8. On or about October 23, CLF directed AMAG to increase CLF's television advertising that opposed Rep. Sutton by \$300,000. *Id.* CLF relied on the ad data provided by AMAG to make this decision and did not coordinate it – or any of CLF's advertising opposing Rep. Sutton – with the Renacci campaign. *Id.* ¶¶ 7-9.

### THE COMPLAINT

The Complaint cites two press accounts to allege that CLF purchased an additional \$300,000 in television advertising soon after a press report that the Renacci campaign cancelled \$850,000 of its own television advertising. Compl. at 1-2. Though the press articles state that the Renacci campaign cancelled its television advertising, they do not say how much was cancelled and the Complaint does not provide a basis for its \$850,000 figure.

Nonetheless, the Complaint states that timing of these transactions “smacks of more than just coincidence.” Compl. at 2. The Complaint speculates that CLF and the Renacci campaign “must have been ‘materially involved’ with one another’s respective television ad timing, intended audience, and means of communication” and, therefore, “illegally coordinated television advertisement purchases.” Compl. at 1, 2. Rather than state its conclusions unequivocally, the Complaint uses the phrase “must have been” and elsewhere repeatedly uses the word “likely.” Compl. at 2. The Complaint does not describe or allege any conduct that constitutes coordination between CLF and the Renacci campaign.

### THE ACT, IMPLEMENTING REGULATIONS, AND COMMISSION PRECEDENT

As an independent expenditure-only committee, CLF is permitted to finance independent expenditures “expressly advocating the election or defeat of a clearly identified candidate,” but may not coordinate such communications with candidate or political party committees. 2 U.S.C. § 431(17); FEC Advisory Ops. 2010-9 (July

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22, 2010), 2010-11 (July 22, 2010). A communication is coordinated if it (1) is "paid for, in whole or in part, by a person other than [a] candidate, authorized committee, or political party committee," (2) satisfies certain "content" standards, and (3) satisfies certain "conduct" standards. 11 C.F.R. § 109.21(a). CLF's independent expenditures opposing Rep. Sutton satisfied the first two criteria because the communications were (1) paid for by CLF and (2) satisfied the "content" standard by "expressly advocat[ing] ... the election or defeat of a clearly identified candidate for Federal office." *Id.* § 109.21(a)(1), (c)(3).

The third criterion – the "conduct" standard – is satisfied only if the communication is made at the "request or suggestion" or with the "material involvement" of a candidate or campaign committee or after one or more "substantial discussions" about the communication with a candidate or campaign committee. *Id.* § 109.21(d)(1)-(3). This third criterion is also satisfied if the communication is made with a "common vendor" or "former employee or independent contractor" to a candidate or campaign committee. *Id.* § 109.21(d)(4)-(5).

Any complaint alleging a legal violation "should contain a clear and concise recitation of the facts which describe a violation." 11 C.F.R. § 111.4(d)(3). When alleging impermissible coordination, a "[c]omplaint's inference" of coordination is not enough. FEC MUR 6077, Factual and Legal Analysis at 5 (May 19, 2009).

Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true and such speculative charges, especially when accompanied by direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.

*Id.* at 6 (internal quotations and citation omitted); see also FEC MUR 6366, Factual and Legal Analysis at 9 (Sept. 7, 2011) (citing "the speculative nature of the complaint"); FEC MUR 6164, Factual and Legal Analysis at 10 (Oct. 9, 2009) ("[b]ased on the speculative nature of the allegations as to the coordination between the [respondents], the Commission finds no reason to believe that" coordination occurred).

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## DISCUSSION

The facts alleged by the Complaint are insufficient to justify the Complaint's speculation that coordination occurred. Furthermore, CLF denies engaging in coordinating conduct and can demonstrate that it did not place its television advertising in coordination with the Renacci campaign.

The factual basis for the Complaint consists of two press accounts suggesting that CLF increased its multi-million dollar television advertising by \$300,000 soon after the Renacci campaign decreased its television advertising. Even if true, these facts do not support the Complaint's coordination claim. The Complaint guesses that CLF and the Renacci campaign "must have" and "likely" coordinated their television advertising, but cannot demonstrate any facts that CLF and the Renacci campaign actually engaged in any coordinating conduct. This is precisely the type of baseless speculation that the Commission has previously determined is insufficient to justify further proceedings. See FEC MUR 6077, Factual and Legal Analysis (May 19, 2009); FEC MUR 6366, Factual and Legal Analysis (Sept. 7, 2011); FEC MUR 6164, Factual and Legal Analysis (Oct. 9, 2009).

Moreover, CLF did not coordinate any of its advertising with the Renacci campaign. Walsh Aff. ¶ 9. CLF made its advertising decisions based on a vendor's commercially available data.<sup>5</sup> *Id.* ¶¶ 7, 8. The vendor, AMAG, provided the data and assured CLF that the vendor's services on behalf of CLF would not result in coordinating conduct. *Id.* ¶ 4; Roberts Aff. ¶ 7. In addition, the vendor had procedures in place to prevent coordination and followed those procedures while providing services to CLF. Roberts Aff. ¶ 5-7.

## CONCLUSION

The Complaint is speculative and does not allege facts to support its coordination allegation. Furthermore, CLF has demonstrated that it conducted its television

<sup>5</sup> The Complaint scoffs that the timing of CLF's increase in its television advertising "smacks of more than just coincidence." As explained here and elsewhere in this response, CLF's decision to increase its television advertising was neither coincidental nor coordinated with the Renacci campaign. CLF's decision was based on commercial data sold by a company that monitored television advertising time purchased by all other organizations that were running advertisements supporting or opposing the Sutton and Renacci campaigns.

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advertising independently of the Renacci campaign. Accordingly, there is no reason to believe that CLF's television advertising was coordinated with the Renacci campaign. The FEC should find no reason to believe that CLF and its Treasurer violated the Act and dismiss this matter.

Sincerely,



Jan Witold Baran  
Caleb P. Burns

Enclosures

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